

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 4th day of February, two thousand eleven.

PRESENT:

ROBERT D. SACK,
ROBERT A. KATZMANN,
DENNY CHIN,
Circuit Judges.

KE HUI WANG,
Petitioner,

v.

09-5155-ag
NAC

ERIC H. HOLDER, JR., UNITED STATES
ATTORNEY GENERAL,
Respondent.

FOR PETITIONER: Michael Brown, New York, New York.

FOR RESPONDENT: Tony West, Assistant Attorney General; Richard M. Evans, Assistant Director; Kevin J. Conway, Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Ke Hui Wang, a native and citizen of the
6 People's Republic of China, seeks review of a November 27,
7 2009, order of the BIA, affirming the December 15, 2008,
8 decision of Immigration Judge ("IJ") William P. Van Wyke,
9 which denied his application for asylum, withholding of
10 removal, and relief under the Convention Against Torture
11 ("CAT"). *In re Ke Hui Wang*, No. A096 258 196 (B.I.A. Nov.
12 27, 2009), *aff'g* Nos. A096 258 196 (Immig. Ct. N.Y. City
13 Dec. 15, 2008). We assume the parties' familiarity with the
14 underlying facts and procedural history in this case.

15 Under the circumstances of this case, we may consider
16 both the IJ's and the BIA's opinions "for the sake of
17 completeness." *Zaman v. Mukasey*, 514 F.3d 233, 237 (2d Cir.
18 2008) (internal quotations omitted). The applicable
19 standards of review are well-established. *See Shu Wen Sun*
20 *v. BIA*, 510 F.3d 377, 379 (2d Cir. 2007); *Salimatou Bah v.*
21 *Mukasey*, 529 F.3d 99, 110 (2d Cir. 2008). We review the
22 agency's factual findings, including adverse credibility
23 findings, under the substantial evidence standard, treating

1 them as "conclusive unless any reasonable adjudicator would
2 be compelled to conclude to the contrary." 8 U.S.C. §
3 1252(b)(4)(B); *see also Shu Wen Sun*, 510 F.3d at 379. We
4 review *de novo* questions of law and the application of law
5 to undisputed fact. *Salimaton Bah*, 529 F.3d at 110.

6 As a preliminary matter, Wang does not challenge the
7 agency's determination that his asylum application was
8 untimely under 8 U.S.C. § 1158(a)(2)(B), and thus he has
9 abandoned that claim.

10 As to withholding of removal and CAT relief,
11 substantial evidence supports the agency's adverse
12 credibility determination: (1) Wang's poor demeanor while
13 testifying, (2) two significant inconsistencies in his
14 testimony, and (3) his failure to provide a reasonable
15 explanation for his difficulties in testifying. *See Shu Wen*
16 *Sun*, 510 F.3d at 379.

17 **A. Demeanor**

18 The IJ found Wang not credible, in part because of his
19 demeanor, noting that long pauses preceded some of Wang's
20 answers and that several times he was completely
21 unresponsive. Because the IJ was in the best position to
22 observe Wang's manner while testifying, we afford his

1 demeanor finding particular deference. *See Niang v.*
2 *Mukasey*, 511 F.3d 138, 145 (2d Cir. 2007). Moreover, the
3 record supports the IJ's finding that Wang's answers were
4 unresponsive on several occasions and that he responded to
5 numerous questions - including such elemental questions as
6 what the Chinese government did to him and his wife - by
7 saying that he did not remember.

8 **B. Inconsistencies**

9 In finding Wang's testimony not credible, the agency
10 also reasonably relied on two inconsistencies in his
11 testimony. *See Wensheng Yan v. Mukasey*, 509 F.3d 63, 66 (2d
12 Cir. 2007). First, the agency noted that Wang's testimony
13 was inconsistent as to whether he was detained before or
14 after his wife was discovered by the family planning
15 officials. Wang testified, in conformance with his written
16 statement, that the family planning officials arrested him
17 to make him reveal his wife's whereabouts because she was in
18 hiding. Wang also testified, however, that he was detained
19 on March 4, 2002, while his written statement indicated that
20 the family planning officials had found his wife on March 3,
21 2002. When asked to explain this inconsistency, Wang
22 replied "I forgot."

1 Second, the agency noted that Wang's testimony was
2 inconsistent with respect to the provenance of a hotel
3 receipt dated March 13, 2002, that he submitted in support
4 of his claim that he was still in China at that time. Wang
5 testified that he had given the hotel receipt to his wife in
6 the hotel and that she sent the receipt to him. However,
7 Wang had earlier testified that he had not seen his wife
8 after the abortion, then adding that he saw her only once
9 when she came back from the hospital. When Wang was asked
10 to reconcile his testimony as to whether his wife was with
11 him in the hotel or not, he replied "I cannot remember
12 clear."

13 Because these inconsistencies relate to the heart of
14 Wang's claims, and are substantial when measured against the
15 record as a whole, the agency did not err in finding him not
16 credible. *See Wensheng Yan*, 509 F.3d at 66. In addition,
17 the agency was entitled to rely on the cumulative effect of
18 the inconsistencies, even if individually they were
19 ancillary to Wang's claim. *See Tu Lin v. Gonzales*, 446 F.3d
20 395, 402 (2d Cir. 2006).

21 **C. Absence of Reasonable Explanations**

22 Finally, Wang argues that he adequately explained that
23 the pauses in his testimony and his lack of memory were due

1 to his lack of education and the stress in his life. The IJ
2 reasonably discounted Wang's explanations, however, noting
3 that he first testified that his memory problems stemmed
4 from his stressful work schedule but later indicated that
5 his memory had been bad since he was a child. *See Majidi v.*
6 *Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005) (holding that an
7 agency need not credit an applicant's explanations for
8 inconsistent testimony unless those explanations would
9 compel a reasonable fact-finder to do so). The agency did
10 not err in denying Wang's application for withholding of
11 removal and CAT relief based on its adverse credibility
12 determination, as the claims shared the same factual
13 predicate. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir.
14 2006) (withholding of removal); *Xue Hong Yang v. U.S. Dep't*
15 *of Justice*, 426 F.3d 520, 523 (2d Cir. 2005) (CAT).

16 For the foregoing reasons, the petition for review is
17 DENIED. As we have completed our review, any stay of
18 removal that the Court previously granted in this petition
19 is VACATED, and any pending motion for a stay of removal in
20 this petition is DISMISSED as moot. Any pending request for
21 oral argument in this petition is DENIED in accordance with

1 Federal Rule of Appellate Procedure 34(a)(2), and Second
2 Circuit Local Rule 34.1(b).

3 FOR THE COURT:
4 Catherine O'Hagan Wolfe, Clerk
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 Catherine O'Hagan Wolfe